

July 25, 1984

REMARKS OF HONORABLE THOMAS N. KINDNESS

Subcommittee on Government Information markup of H.R. 5164

Central Intelligence Agency Information Act

Mr. Chairman, I would like to express my support for the bill with the amendments you have just described and urge my colleagues to do likewise.

I would also like to add a few comments for the record on the third amendment you described, that is the content of a bill which I have cosponsored with you and Messrs. Brooks, Horton, and Erlenborn, H.R. 4696.

I think it is appropriate that we in the Congress act to clarify the relationship between the Freedom of Information Act and the Privacy Act and that this legislation is an appropriate vehicle in which to do that.

As one who has been involved in efforts to amend the Administrative Procedure Act over recent years, efforts which have been referred to as "regulatory reform", I am perhaps particularly troubled by agencies reversing longstanding regulations or policy guidance where there has been no change in the underlying statute by the Congress or no change in the circumstances. And, if some courts do not interpret the statutes as we in the Congress intended, I believe it is incumbent upon the Congress to clarify the law, removing any ambiguity which may exist.

This is an appropriate vehicle in which to make this clarification. The issue is clearly raised by this legislation. And, one need not, and should not, harbour feelings of mistrust toward the CIA in order to see the issue as it is raised in section 701(c)(1).

I understand that there is a Supreme Court case pending to resolve differences between several circuit courts of appeals on this issue of statutory interpretation. We in the Congress should save them the trouble and clarify the law on this point.

The Justice Department some time ago expressed its opposition to the action we take today. But we told them not to change the policy in the first place. That advice or guidance was offered without charge, and free advice at times is not considered very valuable. I think it is time, however, that the Department learned that the actions such as it took, reversing longstanding policy, jeopardize enactment of any Freedom of Information Act legislation, even this bill.

Mr. Chairman, I urge adoption of the amendment in the nature of a substitute, the bill as amended, and yield back the balance of my time.